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June 3, 2014

VIA ECF

Hon. Vernon S. Broderick, U.S.D.J.  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 415  
New York, NY 10007

Re: TreeHouse Foods, Inc. v. Green Mountain Coffee Roasters, Inc., No. 14 Civ. 905 (VSB) (S.D.N.Y.) and related cases Nos. 14 Civ. 1609 (VSB), 14 Civ. 1671 (VSB), 14 Civ. 1716 (VSB), 14 Civ. 1836 (VSB), 14 Civ. 1963 (VSB), 14 Civ. 2219 (VSB), 14 Civ. 2255 (VSB), 14 Civ. 2267 (VSB), 14 Civ. 2530 (VSB), 14 Civ. 2582 (VSB), 14 Civ. 2670 (VSB), 14 Civ. 2692 (VSB), 14 Civ. 3018 (VSB), 14 Civ. 3032 (VSB).

Dear Judge Broderick:

I write on behalf of Defendant in the above-captioned actions to request clarification of your May 1 order directing the parties to negotiate a Protective Order and ESI Protocol. While the parties have agreed upon a Protective Order, which should be filed with the Court today once signatures are gathered, there has been some confusion as to the proper scope of the ESI Protocol.

Defendant's understanding is that Your Honor directed the parties to negotiate a standard ESI Protocol that covers topics including definitions of ESI, forms of production, requirements for Bates numbering, systems for de-duplication of electronic files, production delivery requirements, required metadata fields, and privilege issues. Defendant believes this scope is consistent with what was discussed at the May 1 conference and appropriate at this stage of the litigation, especially given that Defendant intends to file motions to dismiss that would obviate the need for complex and burdensome negotiations of a host of other issues. Plaintiffs, in contrast, seek to negotiate a substantially broader document that tracks the Standing Order governing the S.D.N.Y. Pilot Project for Complex Civil Cases (*see Pls.' Ex. A, ECF No. 42-1, June 2, 2014*). As Part II.H of the Pilot Project Standing Order makes clear, a Joint Electronic Discovery Submission like the one Plaintiffs proposed is intended for use in connection with a full Rule 26(f) conference and would cover not only an ESI Protocol but also a variety of other subjects.

Hon. Vernon S. Broderick

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We do not wish to burden the Court with corrections of everything in Plaintiffs' letter from yesterday, other than to note that, in fact, two meet and confers on the ESI Protocol occurred after Plaintiffs provided an initial draft on May 25. In Defendant's view, progress was being made. Prior to Plaintiffs' surprise submission to the Court yesterday afternoon—which Defendant first learned about less than an hour before its submission—Defendant had been awaiting comments from Plaintiffs on a joint letter to the Court updating the Court on the parties' progress and requesting clarification regarding the scope of the order. Defendant had also offered to expand the scope of the proposed ESI Protocol beyond the topics covered in its initial proposal in the hopes of resolving the issue without the Court's involvement.

Defendant has negotiated and will continue to negotiate in good faith regarding an ESI Protocol, and would greatly appreciate guidance from the Court as to the proper scope of the protocol to be negotiated by the parties at this time.

Respectfully submitted,

*/s/ Lev L. Dassin*

Lev L. Dassin

cc: All counsel of record in all actions related to No. 14 Civ. 905